CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below to Examiner Lisa Cook at (703) 308-4242.

Date: 2-4-03 Susan Hess

Susan Hess

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICANT	: JACKOWSKI et al.
INVENTION:	: BIOPOLYMER MARKER INDICATIVE OF DISEASE STATE HAVING A MOLECULAR WEIGHT OF 1350 DALTONS
SERIAL NUMBER	: 09/845,729
FILING DATE	: April 30, 2001
EXAMINER:	: Cook, Lisa V.
GROUP ART UNIT	: 1641
ATTORNEY DOCKET NO.	: 2132.031

TRANSMITTAL LETTER

Box Fee Amendment
Commissioner for Patents
Washington, D.C. 20231

Sir:

Please find enclosed for filing:

X Response to Office Action of September 20, 2002
X Request for Retroactive Extension of Time
X Please charge Deposit Account No. 50-1803 in the amount of $725.00 for a four month extension of time as indicated in the Response.
X Please charge any deficiencies or credit any overpayment to Deposit Account No. 50-1803.

Date: FEB 4/03

Respectfully submitted,

Ferris Lander FEB 4/03

Ferris H. Lander
Registration No. 43,377 34016
McHale & Slavin, P.A.
4440 PGA Boulevard, Suite 440
Palm Beach Gardens, FL 33410
Telephone: (561) 625-6575

McHALE & SLAVIN, P.A.
ATTORNEYS AT LAW

PALM BEACH
FIRST UNION CENTER
SUITE 402, 4440 PGA BOULEVARD
PALM BEACH GARDENS, FLORIDA 33410
e-mail: palmbeach@mspatents.com
TELEPHONE (561) 625-6575
FACSIMILE (561) 625-6572

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MIAMI
e-mail: miami@mspatents.com
TELEPHONE (305) 374-5311
FACSIMILE (305) 374-5238

CHICAGO
e-mail: chicago@mspatents.com
TELEPHONE (312) 939-2515

February 4, 2003

TELECOPIER COVER SHEET

TO:	Examiner Lisa Cook U.S. Patent and Trademark Office
TELECOPIER NO.:	(703) 308-4242
FROM:	Susan Hess Legal Assistant to Ferris Lander
PAGES INCLUDED:	8 (including cover sheet)
TELECOPIER NO.:	(561) 625-6572
REGARDING:	U.S. Patent Appln Serial No. 09/845,729 Our Ref: 2132.031

SPECIAL INSTRUCTIONS:

Attached please find a Transmittal Letter, Request for Retroactive Extension of Time and Response to Examiner's Office Action for the above-identified application.

Please contact me if you have any questions regarding this matter. Thank you for your assistance.

#13
2-5-03
NW

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RESPONSE TO OFFICE ACTION OF SEPTEMBER 20, 2002

Box Fee Amendment
Commissioner for Patents
Washington, D.C.

Sir:

In response to the Requirement for Restriction dated September 20, 2002, having a shortened statutory period for response set to expire October 20, 2002, kindly enter the following response:

Restriction to one of the following inventions has been required under 35 USC 121:

I. Claims 1-2, are drawn to a biopolymer having SEQ ID NO: 1, classified in class 530, subclass 300 or class 530, subclass 350 for example.

II. Claims 3-9, 18-28 and 33-35 are drawn to methods and kits which not only detect SEQ ID NO: 1, further requiring a correlation to disease state, diagnosing, therapeutic avenues, an/or risk assessment, classified in class 436, subclass 518 and class 424, subclass 93.1 for example.

III. Claims 10-17 are drawn to kit for merely detecting SEQ ID NO: 1, classified in class 422, subclass 61 for example.

IV. Claims 29-32 are drawn to antibodies that bind SEQ ID NO: 1, classified in class 530, subclass 387.1/387.2 and class 424, subclass 130.1 for example.

Applicants hereby elect, with traverse, the Group II invention, for further prosecution on the merits.

It is understood that claims 1-2, 10-17, and 29-32 drawn to the non-elected invention, will remain pending, albeit withdrawn from further consideration in this application.

SUMMARY

This case is related, in claim format to several pending applications of which S.N. 09/846,352 is exemplary. After discussions with the Examiner in the '352 case, and subsequent to a Restriction Requirement and subsequent rejoinder under *Ochai*, Applicants have received a Notice of Allowability that the following claims would receive favorable consideration:

CLAIMS OF S.N. 09/846,352

Claim 1. A biopolymer marker peptide consisting of SEQ ID NO:1 diagnostic for Type II

diabetes.

Claim 3. A method for diagnosing Type II diabetes comprising:

(a) obtaining a sample from a patient;

(b) conducting mass spectrophotometric analysis on said sample in a manner effective to maximize elucidation of discernible peptide fragments contained therein; and

(c) comparing mass spectrum profiles of a peptide consisting of SEQ ID NO:1 to mass spectrum profiles of peptides elucidated from said sample; wherein recognition of a mass spectrum profile in the sample displaying the characteristic profile of the mass spectrum profile for the peptide of SEQ ID NO:1 is diagnostic for Type II diabetes.

Claim 6. The method of claim 3, wherein the sample is an unfractionated body fluid or a tissue sample.

Claim 7. The method of claim 3, wherein said sample is selected from the group consisting of blood, blood products, urine, saliva, cerebrospinal fluid, and lymph.

Claim 8. The method of claim 3, wherein said mass spectrophotometric analysis is Surface Enhanced Laser Desorption Ionization (SELDI) mass spectrometry (MS).

Claim 9. The method of claim 3, wherein said patient is a human.

Claim 10. A Type II diabetes diagnostic kit comprising: (a) a peptide consisting of SEQ ID NO:1 and (b) an antibody that binds to said peptide in a sample from a patient.

Claim 11. The diagnostic assay kit of claim 10, wherein said antibody is immobilized on a solid support.

Claim 12. The diagnostic kit of claim 10, wherein said antibody is labeled.

Applicants thus traverse the requirement since claims of alternative scope have been deemed allowable in a single application.

In an effort to maintain equivalent scope in these applications, Applicants would respectfully request that the Examiner reconsider the requirement to include a similar grouping of claims. Applicants would elect such a group, without traverse, and file a supplemental amendment to place the claims in a similar form, so as to be commensurate in scope.

If the Examiner is amenable to these changes, please contact the undersigned via telephone, and a supplemental response will be filed immediately, via facsimile, in order to expedite prosecution.

Respectfully submitted,

Ferris H. Lander
Registration # 43,377

McHale & Slavin, P.A.
4440 PGA Blvd., Suite 402
Palm Beach Gardens, FL 33402
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)

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